United States Court of Appeals
For the First Circuit

No. 02-1231
02-1348

PETER PAUL MITRANO,

Plaintiff, Appellant,

v.

Willard G. Martin, Jr.,

Defendant, Appellee.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges.

JUDGMENT

Entered: August 29, 2002

Plaintiff-appellant Paul (sic) Mitrano appeals the dismissal of his claims for injunctive and declaratory relief. Having carefully reviewed the record, including the briefs of the parties and the opinion of the lower court, we affirm the decision for the reasons set forth below.

The essence of appellant's claim is that a judge in the Family Division of the New Hampshire Court system violated Mitrano's constitutional rights by improperly exercising jurisdiction over his child custody dispute with his wife and violating his rights to travel and due process. Whatever the merits of these claims, the principle of comity espoused in Younger v. Harris, 401 U.S. 37 (1971), and its progeny requires the federal court to abstain from what is a pending state proceeding which clearly involves important state interests. See, e.g., Bettencourt v. Board of Registration in Medicine of Commonwealth of Massachusetts, 904 F.2d 772, 777 (1st Cir. 1990). Moreover, Mitrano has not alleged sufficient facts to support a claim that exceptional circumstances require intervention in this case. The "bad faith" exception has been narrowly construed, id. at 779, and the allegations in the complaint amount to no more than disagreements with the various rulings made by the New Hampshire court. Nor has Mitrano alleged any facts which would indicate that New Hampshire courts are inadequate to protect his constitutional rights. Finally, even if we assume that the decision to abstain is within the discretion of the trial court, we believe that a remand would be pointless since it is virtually certain from the record that, if presented with question, the district court would abstain in this case. See Dunn v. Cometa, 238 F.3d 38, 43 (1st Cir. 2001) (no point in remand where it is clear that lower court would use its discretion to abstain).

Affirmed.

By the Court:

RICHARD CUSHING DONOVAN

Richard Cushing Donovan, Clerk.

cc: Peter Paul Mitrano
Andrew B. Livernois, Esq.
Elizabeth Cazden

certified copies: Honorable Judge Steven J. McAuliffe and James R. Starr, U.S.D.C. Clerk.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Peter Paul Mitrano,
Plaintiff

v. Civil No. 01-153-M

Willard G. Martin, Jr.,
Defendant.

ORDER

Although acting in a pro se capacity, plaintiff is a member of both the New Hampshire and Virginia bars. He is a party to child custody litigation that has been carried on in at least three different states, see, e.g., Mitrano v. Kelly, 785 A.2d 191 (Vt. Aug. 29, 2001) (unpublished table decision), cert. denied, __ S.Ct. __ , 70 USLW 3384 (Jan. 22, 2002), and is currently pending in New Hampshire. In this federal suit, plaintiff seeks declaratory and injunctive relief, as well as damages, against a' sitting New Hampshire judge - the judge who presides over his child custody case. See 42 U.S.C. § 1983. While it, is not entirely clear from his pleadings, it seems that plaintiff's basic complaint is that the state judge found him to be in contempt of court (erroneously according to plaintiff) for removing his two minor sons from New Hampshire to

Virginia while the case was pending and without prior court permission. See Exhibit Q to defendant's memorandum, Mitrano v. Kelly; No. 2000M-0193 (N.H. Superior Ct.., Family Div. at Lebanon). Plaintiff also challenges the New Hampshire court's jurisdiction to resolve issues related to custody of his minor children, and vaguely asserts that his various complaints all add up to an actionable deprivation by the judge-of his federal due process rights.

Plaintiff's federal claims are without merit, as he no doubt suspects. Accepting all well-pleaded facts as true, and construing the complaint in the light most favorable to plaintiff, his claims are that the New Hampshire Superior Court has incorrectly determined its own jurisdiction over the custody issues pending before it; that this court should declare the state judge wrong in finding plaintiff in contempt of the state court; that the state contempt finding violated his federal constitutional rights; that this court should enjoin the state court from violating federal law; and, that money damages should be awarded against the state judge (though plaintiff makes clear that he is suing the judge only in his "official capacity").

Extensive analysis and discussion are not warranted. Plaintiff is a trained attorney and presumably knows, or certainly should know, that his claims are nonstarters. Briefly, the New Hampshire Superior Court's exercise of jurisdiction over his child custody case, whether legally correct or incorrect, and its order finding him in contempt of that court, whether legally corrector incorrect, are matters which he can fully

litigate in the state courts - appeals lie in the New Hampshire Supreme Court and, if cognizable federal issues warrant it, in the United States Supreme Court. Lower federal courts, however, do not sit in review of state court decisions, particularly when the state proceedings are ongoing, as is the case here: See, e.g., District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); Pennzoil Co. v. Texac.o Inc., 481 U.S. 1, 25 (1987) (Marshall, J:, concurring); Lancellotti v. Fay, 909 F.2d 15, 17 (1st Cir. 1990). Once a state court issues a judgment, a federal district court lacks jurisdiction to review the decision, even if the state judgment is patently wrong or was entered following patently unconstitutional proceedings. See Young v. Murphy, 90-F.3d 1225, 1231 (7th Cir. 1996). (Plaintiff here apparently did seek a form of interlocutory appellate relief in the New Hampshire Supreme Court, but relief was denied.)

Plaintiff's complaint stresses that he sues the state judge only in his official capacity (Complaint, Para.. 10), yet seeks money damages. As plaintiff surely knows, claims against state actors in their official capacities are, in effect, claims against the state itself. See Neuron Gaztambide v. Hernandez Torres, 145-F.3d 4.10, 416 (1st Cir. 1998) ("Official-capacity suits . . . 'generally represent only another-way of pleading an action against an entity of which an officer is an agent" . . . [A]n official capacity suit is, in all respects other than name, to be treated as a suit against the entity.") (quoting Kentucky v. Graham; 473 U.S. 159, 165 (1985)).

Consequently, plaintiff cannot bring a 1983 claim for monetary damages against the state judge in his official capacity because the judge is shielded by Eleventh Amendment immunity.

Moreover, of course; the state judge is entitled to absolute judicial immunity, and immunity not just from liability for money damages, but immunity from suit as well. See Mireles v. Waco, 502 U.S. 9 (1991). All of the acts complained of by plaintiff were unarguably taken by the defendant judge in his judicial capacity (i.e., determining the court's jurisdiction, exercising, jurisdiction, and finding plaintiff in contempt of court), and none of the acts complained of was taken in the complete absence of all jurisdiction (the Family Court Division of the Superior Court obviously has subject matter jurisdiction over family law issues, such as child custody). See Stump v. Sparkman, 435 U.S. 349 (1978).

And, of course, the Younger abstention doctrine plainly precludes granting the declaratory or injunctive relief plaintiff seeks in this case. See Younger v. Harris, 401 U.S. 37 (1971); Chaulk Services Inc. v. Mass. Comm'n Against Discrimination, 70 F.3d 1361, 1368 (lst Cir. 1995). Plaintiff is, again, fully able to litigate his jurisdictional theories, claims of innocence regarding the contempt finding, and federal constitutional issues in the ongoing state proceedings.

For the reasons given, and those advanced by the Attorney General in his memorandum in support of defendant's motion to dismiss, defendant's motion to dismiss (document no. 5) is

granted and. plaintiff's complaint is hereby dismissed for failure to state a cause of action upon which relief can be granted. The Clerk of Court shall enter judgment in accordance with this order and close the case.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

January 22, 2001 (sic)

cc: Peter Paul Mitrano, Esq.
Asst. Atty. Gen. Andrew B. Livernois